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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LUCANO CORTEZ-MARIACA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 04-71415

Agency No. A076-605-656

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2009^{**}

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Lucano Cortez-Mariaca, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen.

Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

discretion the denial of a motion to reopen. *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion when it denied Cortez-Mariaca's motion to reopen. *See Mendez-Gutierrez v. Ashcroft*, 340 F.3d 865, 869-70 (9th Cir. 2003) ("[P]rima facie eligibility for the relief sought is a prerequisite for the granting of a motion to reopen"). We reject petitioner's contention regarding *Matter of Velarde-Pacheco*, 23 I. & N. Dec. 253 (BIA 2002) (en banc).

In his motion to reopen, Cortez-Mariaca failed to raise the contention that his visa petition remained pending as a result of prior counsel's actions. We therefore lack jurisdiction to review this claim. *See Ontiveros-Lopez v. INS*, 213 F.3d 1121, 1124 (9th Cir. 2000).

In light of our disposition, we need not reach Cortez-Mariaca's remaining contentions.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.